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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Scott Johnson,**
16 Plaintiff,
17 v.
18 **29-41 South Jackson, L.P.**, a
19 California Limited Partnership;
29-41 South Jackson, LLC, a
20 California Limited Liability
Company;
Elena Galindo Alvarez; and Does
21 1-10,
22 Defendants.

23 **Case No.**

24 **Complaint For Damages And**
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

25 Plaintiff Scott Johnson complains of 29-41 South Jackson, L.P., a
26 California Limited Partnership; 29-41 South Jackson, LLC, a California
27 Limited Liability Company; Elena Galindo Alvarez; and Does 1-10
28 (“Defendants”), and alleges as follows:

29 **PARTIES:**

30 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
5 owned the real property located at or about 41 S. Jackson Avenue, San Jose,
6 California, in January 2019.

7 3. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
8 owned the real property located at or about 41 S. Jackson Avenue, San Jose,
9 California, in March 2019.

10 4. Defendants 29-41 South Jackson, L.P. and 29-41 South Jackson, LLC
11 own the real property located at or about 41 S. Jackson Avenue, San Jose,
12 California, currently.

13 5. Defendant Elena Galindo Alvarez owned El Grullo Restaurant located
14 at or about 41 S. Jackson Avenue, San Jose, California, in January 2019.

15 6. Defendant Elena Galindo Alvarez owned El Grullo Restaurant located
16 at or about 41 S. Jackson Avenue, San Jose, California, in March 2019.

17 7. Defendant Elena Galindo Alvarez owns El Grullo Restaurant
18 (“Restaurant”) located at or about 41 S. Jackson Avenue, San Jose, California,
19 currently.

20 8. Plaintiff does not know the true names of Defendants, their business
21 capacities, their ownership connection to the property and business, or their
22 relative responsibilities in causing the access violations herein complained of,
23 and alleges a joint venture and common enterprise by all such Defendants.
24 Plaintiff is informed and believes that each of the Defendants herein,
25 including Does 1 through 10, inclusive, is responsible in some capacity for the
26 events herein alleged, or is a necessary party for obtaining appropriate relief.
27 Plaintiff will seek leave to amend when the true names, capacities,
28 connections, and responsibilities of the Defendants and Does 1 through 10,

1 inclusive, are ascertained.

2

3 **JURISDICTION & VENUE:**

4 9. The Court has subject matter jurisdiction over the action pursuant to 28
5 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
6 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

7 10. Pursuant to supplemental jurisdiction, an attendant and related cause
8 of action, arising from the same nucleus of operative facts and arising out of
9 the same transactions, is also brought under California's Unruh Civil Rights
10 Act, which act expressly incorporates the Americans with Disabilities Act.

11 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
12 founded on the fact that the real property which is the subject of this action is
13 located in this district and that Plaintiff's cause of action arose in this district.

14

15 **FACTUAL ALLEGATIONS:**

16 12. Plaintiff went to the Restaurant in January 2019 and March 2019 with
17 the intention to avail himself of its goods, motivated in part to determine if the
18 defendants comply with the disability access laws.

19 13. The Restaurant is a facility open to the public, a place of public
20 accommodation, and a business establishment.

21 14. Restrooms are one of the facilities, privileges, and advantages offered
22 by Defendants to patrons of the Restaurant.

23 15. Unfortunately, on the dates of the plaintiff's visits, the defendants did
24 not provide an accessible restroom in conformance with the ADA Standards.¹

25 16. Currently, the defendants do not provide an accessible restroom in

26

27 ¹ For example, the restroom door hardware had a traditional style round knob that required tight grasping and
28 twisting of the wrist to operate. On information and belief there are other issues with the restroom that renders
it non-compliant. Those issues will be fleshed out in discovery and inspections. The plaintiff seeks to have
fully compliant restroom provided.

1 conformance with the ADA Standards.

2 17. Parking spaces are another one of the facilities, privileges, and
3 advantages offered by Defendants to patrons of the Restaurant.

4 18. Unfortunately, on the dates of the plaintiff's visits, the defendants did
5 not provide accessible parking in conformance with the ADA Standards.²

6 19. Currently, the defendants do not provide accessible parking in
7 conformance with the ADA Standards.

8 20. The Restaurant has a sales counter where it handles its transactions with
9 customers.

10 21. Unfortunately, on the dates of the plaintiff's visits, the defendants did
11 not provide an accessible sales counter in conformance with the ADA
12 Standards.

13 22. Currently, the defendants do not provide an accessible sales counter in
14 conformance with the ADA Standards.

15 23. Plaintiff personally encountered these barriers.

16 24. By failing to provide accessible facilities, the defendants denied the
17 plaintiff full and equal access.

18 25. The lack of accessible facilities created difficulty and discomfort for the
19 Plaintiff.

20 26. The defendants have failed to maintain in working and useable
21 conditions those features required to provide ready access to persons with
22 disabilities.

23 27. The barriers identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,

27 28 ² For example, the access aisle that accompanied the parking stall marked and reserved for persons with
disabilities had inaccessible slopes. On information and belief there are other issues with the parking that
renders it non-compliant. Those issues will be fleshed out in discovery and inspections. The plaintiff seeks
to have fully compliant parking provided.

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 28. Plaintiff will return to the Restaurant to avail himself of its goods and to
5 determine compliance with the disability access laws once it is represented to
6 him that the Restaurant and its facilities are accessible. Plaintiff is currently
7 deterred from doing so because of his knowledge of the existing barriers and
8 his uncertainty about the existence of yet other barriers on the site. If the
9 barriers are not removed, the plaintiff will face unlawful and discriminatory
10 barriers again.

11 29. Given the obvious and blatant nature of the barriers and violations
12 alleged herein, the plaintiff alleges, on information and belief, that there are
13 other violations and barriers on the site that relate to his disability. Plaintiff will
14 amend the complaint, to provide proper notice regarding the scope of this
15 lawsuit, once he conducts a site inspection. However, please be on notice that
16 the plaintiff seeks to have all barriers related to his disability remedied. See
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
18 encounters one barrier at a site, he can sue to have all barriers that relate to his
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 31. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 32. When a business provides facilities such as a restroom, it must provide
22 an accessible restroom in compliance with the ADA Standards.

23 33. Here, no such accessible restroom has been provided.

24 34. When a business provides parking for its customers, it must provide
25 accessible parking in compliance with the ADA Standards.

26 35. Here, the parking is not provided in compliance with the ADA
27 Standards.

28 36. When a business provides facilities such as a sales or transaction

1 counter, it must provide an accessible sales or transaction counter in
2 compliance with the ADA Standards.

3 37. Here, no such accessible sales counter has been provided in compliance
4 with the ADA Standards in violation of the ADA.

5 38. The Safe Harbor provisions of the 2010 Standards are not applicable
6 here because the conditions challenged in this lawsuit do not comply with the
7 1991 Standards.

8 39. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 40. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13

14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
15 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
16 Code § 51-53.)**

17 41. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
20 that persons with disabilities are entitled to full and equal accommodations,
21 advantages, facilities, privileges, or services in all business establishment of
22 every kind whatsoever within the jurisdiction of the State of California. Cal.
23 Civ. Code §51(b).

24 42. The Unruh Act provides that a violation of the ADA is a violation of the
25 Unruh Act. Cal. Civ. Code, § 51(f).

26 43. Defendants’ acts and omissions, as herein alleged, have violated the
27 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
28 rights to full and equal use of the accommodations, advantages, facilities,

1 privileges, or services offered.

2 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
3 discomfort or embarrassment for the plaintiff, the defendants are also each
4 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
5 (c).)

6 45. Although the plaintiff was markedly frustrated by facing discriminatory
7 barriers, even manifesting itself with minor and fleeting physical symptoms,
8 the plaintiff does not value this very modest physical personal injury greater
9 than the amount of the statutory damages.

10

11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide
13 relief as follows:

14 1. For injunctive relief, compelling Defendants to comply with the
15 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
16 plaintiff is not invoking section 55 of the California Civil Code and is not
17 seeking injunctive relief under the Disabled Persons Act at all.

18 2. Damages under the Unruh Civil Rights Act, which provides for actual
19 damages and a statutory minimum of \$4,000 for each offense.

20 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
21 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

22

23 Dated: May 16, 2019

CENTER FOR DISABILITY ACCESS

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25 By:



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27 _____

28 Amanda Seabock, Esq.
Attorney for plaintiff